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Of Attorneys for the United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

Civil No. 00-1536-BR

Plaintiff,

AMENDED COMPLAINT

v.

ERWIN GRANT and Real Property
located at 3368 N.E. MARTIN LUTHER
KING JR. BOULEVARD,

Defendants.

Plaintiff United States of America, on behalf of the Administrator of the Environmental Protection Agency (EPA), alleges as follows:

I. INTRODUCTION

1. This is a civil action:

(a) for recovery of costs, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9607, that the United States has incurred in connection with the release or threatened release of hazardous substances into the environment at and from a facility owned by Erwin Grant ("Grant"), located at 3368 N.E. Martin Luther King, Jr. Boulevard, Portland, Oregon (the "Site" or "Facility"); and

(b) for recovery in rem of the costs, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), constituting the Federal lien against the real property comprising the Site.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Sections 107(a), 107(l)(4), and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9607(l)(4), and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345. This Court has jurisdiction over the property that is the subject matter of the in rem action pursuant to Section 107(l)(4) of CERCLA, 42 U.S.C. § 9607(l)(4), 28 U.S.C. § 1655, and Federal Rule of Civil Procedure 4(n).

3. Venue is proper in this district pursuant to Sections 107(l)(4) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(l)(4) and 9613(b), and pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1395, because the releases or threatened releases of hazardous substances occurred in this

district, because the removal action which led to EPA's incurrence of response costs occurred in this district, and because the Site is located in this district.

III. DEFENDANTS

4. Defendant Erwin Grant is a person within the meaning of Sections 101(21), 104 and 107 of CERCLA, 42 U.S.C. §§ 9601(21), 9604 and 9607 and is the owner of the Site and an owner or operator of a facility at the time of the disposal of hazardous substances at the facility. The Circuit State for the State of Oregon for the County of Multnomah, Probate Department has appointed Ken Grant as the conservator of Erwin Grant's financial affairs.

5. Defendant Real Property, located at 3368 Martin Luther King, Jr. Boulevard, Portland, Multnomah County, Oregon, is the subject of the United States' in rem claim in this action.

IV. THE SITE

6. The Site is located at 3368 NE Martin Luther King, Jr. Boulevard, Portland, Oregon, with the following legal description: Lots 29, 30 and 31 in Block 13 Albina, City of Portland.

7. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §§ 9601(9). From approximately 1975 until on or about December 1998, Grant operated a precious metals extraction business and laboratory facility at the Site. Grant has owned the real property at the Site since on or about 1975.

V. RESPONSE ACTION

8. On or after November 18, 1998, upon obtaining access to the Site, EPA conducted a site investigation. EPA determined that the Site contained numerous drums and containers of

chemicals. The majority of the containers were haphazardly stored within the warehouse structure. Many containers were in poor, deteriorated condition and had leaked their contents. Some of the drums and containers were rusted, and there had been spills of chemicals at the Site. The samples collected during the investigation were analyzed and the results indicated that the containers contained hazardous substances, including heavy metals, acids and cyanide.

9. Chemicals present at the Site, considered hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), see 40 C.F.R. § 302.4, included lead, cadmium, chromium, potassium cyanide, sodium cyanide, mercury, nitric acid, oxalic acid, and hydrochloric acid.

10. Based on the site investigation, EPA determined that actual or threatened releases of hazardous substances at or from the Site presented an imminent and substantial endangerment to public health, welfare or the environment.

11. On or about December 15, 1998, EPA obtained a Court order granting EPA and its officers, employees and authorized representatives permission to enter upon and gain immediate, full and unrestricted access to the Site for the purposes and to the extent provided in Section 104 of CERCLA, 42 U.S.C. § 9604, to remove hazardous substances at the Site and to perform such activities as are authorized by those statutory provisions.

12. Thereafter, EPA initiated an emergency removal action in response to the actual or threatened releases of hazardous substances at the Site pursuant to Section 104 of CERCLA, 42 U.S. C. § 9604.

13. EPA completed all removal activities at the Site on or about February 19, 1999.

VI. FEDERAL LIEN

14. In conducting the emergency removal activities, EPA incurred costs for which Grant is liable. These costs constitute a lien against the real property comprising the Site because that property belongs to Grant and is subject to or affected by a removal or remedial action.

15. On or about June 11, 1999, EPA provided written notice of the lien to Grant and requested him to notify EPA if he believed EPA did not have a reasonable basis upon which to perfect the lien. EPA also notified Grant that he could request a meeting with a neutral EPA official to present any information he had to indicate EPA did not have a reasonable basis upon which to perfect the lien. Grant responded to EPA's written notice and requested a meeting with a neutral EPA official.

16. On or about January 14, 2000, a neutral EPA official conducted a hearing regarding EPA's reasonable basis to perfect its lien. On or about February 9, 2000, the EPA neutral determined that there was a reasonable basis for EPA to perfect the lien.

17. On or about March 3, 2000, EPA perfected a lien on the real property of the Site for EPA's costs in connection with the Site.

VII. STATUTORY BACKGROUND

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility

at which such hazardous substances were disposed
of,

....

(4) . . . shall be liable for--

(A) all costs of removal or remedial action
incurred by the United States Government . . . not
inconsistent with the national contingency plan;

....

19. As of February 19, 1999, the United States has incurred at least \$600,000 in response costs, not including prejudgment interest, in connection with the Site.

20. There have been releases or a substantial threat of a release of hazardous substances at the Site, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §§ 9601(22).

21. EPA had a reasonable basis for its belief that there was a release and that there existed a threat of a release of a hazardous substance, pollutant or contaminant at the Site. The release or threatened release of hazardous substances into the environment was determined and documented by EPA.

22. Defendant is an owner and operator of the Site within the meaning of Sections 101(20) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a). Therefore, he is in one of the liable party categories in CERCLA § 107(a).

VIII. FIRST CLAIM FOR RELIEF

23. Paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

24. As a current owner of a facility and as an owner or operator of a facility at the time of the disposal of hazardous substances at the facility, Grant is within the classes of liable parties described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

25. EPA's response action, including removal of drums, containers, tanks, and related hazardous substances, as well as contaminated soils, constitutes a "removal" and a "response action" within the meaning of Section 101(23) and 101(25) of CERCLA, 42 U.S.C. §§ 9601(23) and 9601(25).

26. As a result of the release or threatened release of hazardous substances into the environment at and from the Grant Warehouse Site, the United States has incurred response costs of approximately \$1,400,000, excluding prejudgment interest and administrative and legal enforcement costs. The response costs the United States has incurred are not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.

27. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendant Grant is liable to the United States for all costs incurred by the United States in connection with response actions at the Grant Warehouse site, including prejudgment interest on all such costs.

IX. SECOND CLAIM FOR RELIEF

28. Paragraphs 1 through 27 are re-alleged and incorporated herein by reference.

29. Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), provides in pertinent part:

(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section . . . shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred.

30. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Grant is a person liable to the United States for all response costs incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs. Pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), the costs incurred by the United States in connection with the Site constitute a lien upon the real property constituting the Site.

31. Pursuant to Section 107(l)(2) of CERCLA, 42 U.S.C. § 9607(l)(2), Grant was provided with written notice of potential liability on or about June 11, 1999, informing him that he was a PRP under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Pursuant to Section

107(I)(2), 42 U.S.C. § 9607(I)(2), the lien upon the Site will continue until liability for the United States' un-reimbursed response costs incurred in connection with the Site is satisfied.

32. Pursuant to Section 107(I)(3) of CERCLA, 42 U.S.C. § 9607(I)(3), the United States properly perfected its lien upon the Grant Warehouse Site by filing a notice in the appropriate office within the State and County in which the property is located. Pursuant to Section 107(I)(4) of CERCLA, 42 U.S.C. § 9607(I)(4), the costs constituting the lien may be recovered in an action in rem in the United States District Court for the District in which the removal or remedial action has occurred.

X. REQUEST FOR RELIEF

WHEREFORE, plaintiff United States requests that this Court:

1. Award the United States its costs of performing response and removal actions in connection with the Grant Warehouse Site pursuant to 42 U.S.C. § 9607(a);
2. Direct the said lien on the Grant Warehouse Site be foreclosed and the real property be sold in a manner provided by law; that the purchaser at said sale be issued a Certificate of Sale of Real Property and be immediately let into possession of said property; and that at the termination of the redemption period be issued the deed;
3. That the proceeds realized from the sale of the real property be paid to the United States for all response costs for which defendant Grant is liable under CERCLA;
4. Decreeing that said Defendant and all persons claiming by, through or under him be forever barred and foreclosed from asserting any right, title or interest in and to the said real property, except the right of redemption provided by law; and,
5. Award the United States such other relief as this Court may deem appropriate.

Dated this 16th day of December 2003.

Respectfully submitted,

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